

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KIMBERLY KILPATRICK,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ORDER

09-cv-393-bbc

On November 30, 2009, this court entered what it told plaintiff would be her last extension of her deadline for filing a brief in support of her request for judicial review of the commissioner's decision. Plaintiff was ordered to file her brief no later than December 31, 2009. It is now January 6, 2010, and the court has not received a brief from plaintiff. Plaintiff has, however, submitted letters stating that she has been awarded SSI benefits on her new application and that she has been busy trying to find a lawyer who will take her case. Dkts. 11 and 12. Attached to one of these letters was a letter dated December 19, 2009 from a social worker at the Mental Health Center of Dane County stating that plaintiff has acute concentration problems and anxiety that prevent her from working. Dkt. 12, Exh. 1.

It is unclear from plaintiff's submissions whether she is seeking another extension or whether she has not submitted a brief either because her new application for benefits was granted or because she still is trying to find a lawyer. What is clear, however, is that there is no reason to delay this case any longer. As this court explained in a previous order, plaintiff's new application does not affect this case and she has had more than two months to try to find a lawyer.

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G. A. Korth, Secretary to
Judge Crocker

Accordingly, this case will be placed under advisement on Friday, January 15, 2010. No more extensions will be granted. If plaintiff would like this court to review the administrative law judge's decision denying her application for benefits, she must submit a brief on or before January 15, 2010, explaining why the judge's decision was wrong. It is not enough for plaintiff to assert that she is disabled: she must point to evidence that supports her claim and point out any mistakes the judge made in his decision. Further, any evidence that plaintiff has to support her claim must have been in the record at the time the administrative law judge made his decision or must address her condition as it was at the time of the decision, which was issued on December 23, 2008. Put another way, even if plaintiff has evidence that shows that she is disabled now, that does not automatically mean that she was disabled on or before December 23, 2008. The evidence must relate to the time period addressed by the administrative law judge.

If plaintiff fails to submit a brief by Friday, January 15, 2010, then her case will be dismissed for her failure to prosecute it.

ORDER

IT IS ORDERED that plaintiff Kimberly Kilpatrick has until Friday, January 15, 2010, in which to submit a brief in support of her request for judicial review. If plaintiff fails to file a brief on or before that date, then the court will dismiss her case for her failure to prosecute it. No further extensions will be granted.

Entered this 6th day of January, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge